

Order

Michigan Supreme Court
Lansing, Michigan

November 27, 2007

Clifford W. Taylor,
Chief Justice

134840

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 134840
COA: 269605
Wayne CC: 04-005425-01

KEENAN LEE ROBINSON,
Defendant-Appellant.

On order of the Court, the application for leave to appeal the July 19, 2007 judgment of the Court of Appeals is considered and, in lieu of granting leave to appeal, we REVERSE the July 17, 2007 order of the Court of Appeals denying the motion to file a supplemental brief, and we REMAND this case to the Court of Appeals for plenary consideration of the issue raised in the defendant's supplemental brief: whether the trial court's upward departure from the applicable sentencing guidelines range, and extent of departure, were supported by substantial and compelling reasons. *People v Babcock*, 469 Mich 247 (2003). The Court of Appeals shall issue an order permitting the prosecutor to respond. In all other respects, leave to appeal is DENIED, because we are not persuaded that the remaining questions presented should be reviewed by this Court.

We do not retain jurisdiction.

WEAVER J., would deny leave to appeal.

YOUNG, J., dissents and states as follows:

I respectfully dissent from this Court's order reversing the order of the Court of Appeals denying defendant's motion to file a supplemental brief and remanding this case to the Court of Appeals for plenary consideration of the issue raised in defendant's supplemental brief. A party may not file a supplemental brief in the Court of Appeals except "by leave of the Court." MCR 7.212(G). With the assistance of counsel, defendant filed his initial brief on September 5, 2006. Upon defendant's request, his counsel filed in the trial court a motion to withdraw, which was granted on February 15,

2007. Substitute counsel was appointed on April 19, 2007. On July 9, 2007, the day before this case was submitted on the case call, substitute counsel moved to file a supplemental brief. On July 17, 2007, the Court of Appeals denied defendant's motion and returned the supplemental brief. I disagree with the majority that the Court of Appeals abused its discretion by denying defendant's 11th hour motion to add issues to his appeal. Therefore, I would deny his application and require him to raise these issues in a motion for relief from judgment.

CORRIGAN, J., joins the statement of YOUNG, J.



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I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

November 27, 2007

Corbin R. Davis

Clerk